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EXAMINER

BONCK, RODNEY H

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALPH W. BAXTER, JR.

Appeal 2006-3052
Application 10/765,959
Technology Center 3600

Decided: June 25, 2008

Before WILLIAM F. PATE, III, TERRY J. OWENS, and JENNIFER D.
BAHR, *Administrative Patent Judges*.

PATE, III, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a response to a Request for Rehearing filed by Appellant with respect to a Decision entered by the Board in the above-noted Appeal. Requests for Rehearing are limited to matters misapprehended or overlooked by the Panel in rendering its decision.

Appellant states that the Board made a factual error in its decision.

However, Appellant is arguing the Board's claim construction, which is, in fact, a legal issue, not a factual one.

Be that as it may, Appellant continues to argue that the term "differential," which we suppose in some way Appellant believes is equivalent to the claim term "differential assembly," must be construed as a device with one input and two outputs, the outputs being allowed to rotate at different speeds. The Examiner had argued in the Answer that the Porter device was in the nature of a clutch that is used as a so-called "center differential." After consulting extrinsic evidence, we determined that "center differentials" were known in the art and the Examiner's claim construction was not unreasonable, particularly where Appellant's claim is not directed to a "differential" *per se* but to "a torque transmitting apparatus" containing a "differential assembly." It is entirely reasonable to assume that the claim terminology "differential assembly" is broader than Appellant's dictionary-defined term "differential." If Appellant is intent on using broadening language in the claims such as the term "assembly," he can hardly complain when the Examiner interprets these same terms broadly.

As further evidence that the Examiner's claim construction was not unreasonable, we referred Appellant's attention to Appellant's independent claims on appeal which claims do not support Appellant's argued definition that a differential assembly must contain two output shafts. Both of Appellant's independent claims are directed to a device with "at least one output shaft." We noted that this discrepancy between what is being argued and what is being claimed is unexplained on the record. We raised this issue at oral hearing. Appellant's counsel did not have a response. Appellant's Request for Rehearing is silent on this issue as well.

To sum up, Appellant's claims are directed to an apparatus that includes "at least one output shaft." The Examiner has a reference that contains all the structure called for including having one output shaft. Appellant's argument is that the claims should be construed more narrowly than the express language of the claims, i.e., they should be construed as having "two" or "two or more output shafts." This argument is unsuccessful in convincing us the Examiner erred in rejecting the claims as lacking novelty over Porter.

Appellant's Request for Rehearing has been granted to the extent that we have reviewed our prior decision, but it is denied with respect to making any changes thereto.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

REHEARING DENIED

hh

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